In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 781

SEARS, ROEBUCK AND CO., AND TERMINAL FREIGHT CO-OPERATIVE ASSOCIATION AND TERMINAL FREIGHT HANDLING CO., PETITIONERS

v.

JOSEPH H. SOLIEN, REGIONAL DIRECTOR OF THE FOURTEENTH REGION OF THE NATIONAL LABOR RELATIONS BOARD, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

MEMORANDUM FOR RESPONDENT SOLIEN IN OPPOSITION

1. Petitioners filed charges with the Regional Director of the National Labor Relations Board alleging that the respondent Union was engaging in a secondary boycott in violation of Section 8(b)(4)(B) (29 U.S.C. 158(b)(4)(B)) of the National Labor Relations Act. Upon determining that a complaint should issue on the charges, the Regional Director petitioned the United States District Court for the Eastern Dis-

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trict of Missouri for an injunction against the Union's activity, pursuant to Section 10(l) (29 U.S.C. 160(l)) of the Act. Before the date set for hearing on the injunction, the Regional Director and the Union entered into a stipulation for a cessation of the Union's alleged secondary activity pending a final determination of the charges by the Board. The stipulation further provided for the entry of a temporary injunction if the stipulation were violated. The district court, after considering petitioners' objections that the stipulation provided inadequate protection, issued an order approving the stipulation with some modification. (Pet. App. 44–47, 51, 62.)

Shortly after the filing of the injunction petition, petitioners moved to appear as full parties litigant, or to intervene, in the Section 10(l) proceeding (Pet. App. 28–33). The district court denied these motions (Pet. App. 59), and petitioners have appealed this ruling to the court of appeals (Pet. App. 64–67). Petitioners seek immediate review of that ruling by this Court, prior to consideration of the issue by the court of appeals.

2. Petitioners have not shown, as Rule 20 of the Rules of this Court requires for certiorari before judgment in the court of appeals, that this case "is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this court." *First*, the issue itself does not meet that standard. *Second*, the reason which petitioners give for bypassing the court

of appeals no longer exists.[1] *Finally*, a stipulation has been approved by the district court which effectively stops the Union's alleged secondary activity pending the completion of the main Board unfair labor practice proceeding. That proceeding is approaching completion, since the Union has agreed with the Regional Director to enter into a formal settlement of the unfair labor practice case, and has consented to the entry of an order by both the Board and the court of appeals enjoining it from engaging in the secondary activity alleged in the complaint (Pet. App. 68–80, 101).[2] The settlement agreement has been submitted to the General Counsel for approval. See 29 C.F.R. Sec. 101.9(c)(2). Under these circumstances, the case is not an appropriate one in which to review the issue which petitioners raise. See *Terminal Freight Cooperative Assoc.* v. *Samoff*, No. 1481, 1969 Term, certiorari denied, 398 U.S. 965; cf. *Sears Roebuck & Co.* v. *Carpet Layers, Local 419*, 397 U.S. 655.

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[1] Petitioners contend (Pet. 11) that certiorari before judgment is appropriate because a similar issue is presented by the petition for certiorari in *The Los Angeles Herald Examiner, et al.* v. *Kennedy*, No. 350, 1970 Term. However, as pointed out in respondent Kennedy's supplemental memorandum, the issue presented in that case is now moot as a result of the issuance of the Board decision and order in the underlying unfair labor practice proceeding. *Los Angeles Guild, Local 69, et al.*, 185 NLRB No. 25, August 27, 1970. See *Sears, Roebuck & Co.* v. *Carpet Layers, Local 419*, 397 U.S. 655.

[2] Petitioners brought suit in the district court to enjoin the settlement negotiations, which suit was dismissed on jurisdictional grounds (Pet. App. 89–99). A stay of that decision was denied by both the court of appeals (Pet. App. 102), and Mr. Justice Blackmun (*Sears, Roebuck and Co.* v. *Solien*, 1970 Term, application denied August 19, 1970).

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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